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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,216	04/25/2001	Herbert Wegner	F-6912	5061

7590
Jordan & Hamburg
122 East 42nd Street
New York, NY 10168

08/27/2003

EXAMINER

BUSHEY, CHARLES S

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 08/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,216

Applicant(s)

WEGNER ET AL.

Examiner

Scott Bushey

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5(1),15(1,8,9),19(1,8,9),20{19(1,8,9)},21-24,29,30,39,40,45,47-49,54, and 55 is/are rejected.
- 7) ☒ Claim(s) 8-14,33-38,41,46 and 53 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims withdrawn from consideration are 2-4,5(2,3),6,7,15(2,3),16-18,19(2,3),20{19(2,3)},25-28,31,32,42-44, and 50-52.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species B, as depicted by Figure 2 in Paper No. 15 is acknowledged. The traversal is on the grounds that the claims are so directly related to each other that it is believed that all the claims may properly be included in the same application. Applicant also argues that all of the claims can be examined in the same application without serious burden. This is not found persuasive because as stated in the election requirement, the claims within the separate species possess special technical features that are exclusive to the individual species, thereby providing patentable distinctions between the species that have not been addressed specifically by applicant.

The requirement is still deemed proper and is therefore made FINAL.

With respect to the above election, claims 2-4, 5(2 or 3), 6, 7, 15(2 or 3), 16-18, 19(2 or 3), 20{19(2 or 3)}, 25-28, 31, 32, 42-44, and 50-52 are withdrawn from further consideration.

Specification

2. The disclosure is objected to because of the following informalities: page 6, line 16, "continues" should be replaced by --continuous--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 15(1,8, or 9), 19(1,8, or 9), and 20{19(1,8, or 9)} are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 15(1,8, or 9) lacks antecedent basis with respect to “the lower end of the measuring container” and “the measuring container (11)”.

Claim 19(1,8, or 9) lacks antecedent basis with respect to “the pipeline (14)” and “the measuring container (11)”.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 21, 22, 30, 47, and 48 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cichelli et al (Figs. 2 and 3).

6. Claims 1, 5(1), 21-24, 30, 47, and 48 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Eckert (Fig. 1).

7. Claims 21, 22, 47, 48, and 54 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Alvarez et al (Fig. 2).

8. Claims 21, 22, 30, 39, 40, 45, 47-49, and 55 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ono (Figs. 1 and 2).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Cichelli et al, Eckert, Alvarez et al, and Ono, taken in view of applicant's admission of known prior art.

Each of the references have been applied above, and each of the references teach an atomizing nozzle of conventional design. While a slotted spherical nozzle is considered to be conventional within the liquid atomization art, none of the alternative references specifically disclose such. It is noted however, that applicant at the last five lines of page 2 of the instant application, admits that a slotted nozzle and circularly ducted nozzle are obvious variants of one another. Accordingly, it would have been obvious for an artisan at the time of the invention, to modify the construction of the atomization nozzle of any one of the alternative references to have a slotted, spherical head, in view of that which is admitted known within the art by applicant.

Allowable Subject Matter

12. Claims 15(1,8, or 9), 19(1,8, or 9), and 20{19(1,8, or 9)} would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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13. Claims 8-14, 33-38, 41, 46, and 53 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Bushey whose telephone number is (703) 308-3581. The examiner can normally be reached on Monday-Thursday 6:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine R. Copenheaver can be reached on (703) 308-1261. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Scott Bushey
Primary Examiner
Art Unit 1724

csb
8/18/03


8-18-03